IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1814 of 2006
with
CRIMINAL MISC. APPLICATION No.11445 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOR VIRAJI JESANGJI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YM THAKORE for Appellant(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/11/2006

ORAL JUDGMENT

Criminal Appeal No.1814 of 2006 is though not separately notified on Board, at the request of the learned advocate, the same is taken up for hearing

and final disposal with the consent of learned APP, Mr.H.L. Jani. The papers are available with Criminal Misc. Application No.11445 of 2006.

2. The appellant-Thakor Viraji Jesangji, original accused no.1, aged 65 years is before this Court being aggrieved by judgement and order passed by the learned Additional Session Judge, Patan in Sessions Case No.55 of 2004 dated 13th September 2006.

3. The learned Additional Sessions Judge was pleased to convict the present appellant-accused no.1 for an offence under section 332 of IPC.

4. The learned Additional Sessions Judge, Patan was pleased to award six months simple imprisonment and fine of Rs.3000/-; in default one month's simple imprisonment for the offence. Whereas, he along with other accused was acquitted of the rest of the charges giving them benefit of doubt.

5. Learned advocate Mr.Thakore submitted that though a request was made for grant of benefit of provisions of Probation of Offenders Act and the

benefits flowing from section 360 of the Code of Criminal Procedure, the same were not granted. The learned advocate for the appellant submitted that the incident had taken place on 24th September 2003 at Village Randhanpur in Mota Thakorevas Chowk. He submitted that the case of the prosecution was though very shaky and the evidence led was also not convincing, to establish the charge against the present appellant, but believing the presence of the present appellant the learned Additional Sessions Judge convicted the appellant for the offence under section 332 of IPC.

The learned advocate for the appellant submitted that taking into consideration the age of the appellant, i.e. 65 years and taking into consideration the fact that the appellant does not have any criminal background and the fact that even after the so called incident of 24th September 2003, there is no other incident which will warrant that the appellant should receive sentence and should be deprived of the benefits flowing from sections 3 & 4 of the Probation of Offenders Act and section 360 of the Code of

Criminal Procedures.

6. Having heard the learned advocate for the appellant and the learned APP, Mr.H.L. Jani, for the State, it is deemed fit that the benefits flowing from section 3 and 4 of the Probation of Offenders Act and section 360 of the Code of Criminal Procedure be conferred on the appellant. The Court is also not able to find out any reason for which the learned Additional Sessions Judge should have denied the aforesaid benefit to a person like the present appellant, who does not have any background of any prior incident of criminal activity.

7. In view of the aforesaid discussion, taking into consideration contents of Section 360 of the Criminal Procedure Code, Sections 3 and 4 of the Probation of Offenders Act, circumstances of the case, nature of the offence, the character of the offender, the age of the appellant-accused at the time of incident and the fact that there is no untoward incident has taken place during this entire period, it is deemed fit that the petitioner – accused be released on probation of good conduct.

8. Accordingly, the petitioner-accused is directed to be released on probation of good conduct on his entering into a bond in the sum of Rs.5,000/- (Rupees five thousand only) for a period of one year, to appear and receive sentence when called upon during the period of one year. Conviction is maintained and sentence is quashed. Appeal is allowed.

9. As Criminal Appeal No.1814 of 2006 is allowed, Criminal Misc. Application No.11445 of 2006 becomes infructuous. The same is disposed of accordingly. Direct service is permitted.

(RAVI R. TRIPATHI, J.)

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